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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/510,400	02/22/00	STILLMAN	S 53017/00001

IM22/1213

STEFAN J. KIRCHANSKI, ESQ.  
HOGAN & HARTSON, L.L.P.  
BILTMORE TOWER  
500 SOUTH GRAND AVENUE, SUITE 1900  
LOS ANGELES CA 90071

EXAMINER

BHAT, N

ART UNIT

PAPER NUMBER

1761

9

DATE MAILED:

12/13/00

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

**Office Action Summary**

Application No.

09/510,400

Applicant(s)

STILLMAN, SUZANNE JAFFE

Examiner

N. Bhat

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 June 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-45 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-45 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. & 119(e).

**Attachment(s)**

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claims 1-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In all of the claims applicant has used "water-like" fluid which renders the claim indefinite as "something-like" language does not clearly, and positively set forth what is being claimed. Water-like is ambiguous. Water-like could be water-like in viscosity, water-like in clarity, water-like in taste, water-like in color. Applicant will probably argue that "water-like" has been used in US Patents, the examiner suggests that a better term which is definite and less ambiguous is to use language as a water composition for consumption by humans and animals comprising..... which will obviate the rejection.

2. Claims 2-45 are rejected as being dependent upon a rejected base claim.

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Gandhi.

Gandhi teaches a clear/translucent beverage containing a non-gelling water soluble fiber, which includes water, and other ingredients which can be in

the form of a powder mix, a liquid concentrated or a ready-to drink bottle beverage. The powder mix and liquid concentrate can be diluted with water or other ingestible liquids to reconstituted into a liquid beverage. The beverage can further include metal salts, food acids, colorings, carbonates, nutrients, vitamins, pharmaceutically active ingredients liposomes and herbal products. A clear beverage, which contains partially hydrolyzed vegetable gum as the soluble fiber in the amounts of 0.1 to 25% has been specifically, taught the range overlaps and the ranges as claimed by applicant thus anticipating the claims. Gandhi teaches that the addition of water soluble fiber has important health benefits which lowers cholesterol, the risk of heart disorders, colon cancer, produces benefits like regularity in bowel movement, reduces constipation, diverticulosis and irritable bowel syndrome.[Note column 3, lines 1-41 and Column 4, lines 13-65] Gandhi further teach that the clear beverage can include food colorings, flavorings, sweeteners and acids.[Note Example 1] Although Gandhi does not specifically teach that the beverage can be used for appetite suppression, for diabetes, etc. The composition as claimed would inherently provide the health benefits as described by applicant for obesity and diabetes since the composition described by Gandhi fully anticipates applicant's composition.

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Mitchell teach a natural beverage powder from dahlia extracts which is used in hot or cold milk or water. Smith teaches an improved process for producing a beta-glucanase treated water soluble dietary fiber

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composition. Ohta teaches food composition comprising a water-soluble dietary fiber and protein, which can be used in beverage preparations.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3602 for regular communications and 703-305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.



N. Bhat  
Primary Examiner  
Art Unit 1761

nbl  
November 17, 2000

\* Applicant's 1449 (IDS) has been considered. The art from 1449 is with the case. With Paper Handling the 1449 form has been lost. Please resubmit new 1449 in the next office action (communication).

NS